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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,917	05/15/2001	James A. Brownlee	LCB 317	9463

7590

04/02/2003

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EXAMINER

BRITTAIN, JAMES R

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 04/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/855,917

Applicant(s)

BROWNLEE ET AL.

Examiner

James R. Brittain

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

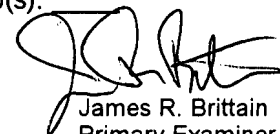
Claim(s) allowed: _____.

Claim(s) objected to: 2,5 and 7-9.

Claim(s) rejected: 1,3,4 and 6.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____


James R. Brittain
Primary Examiner
Art Unit: 3677

Continuation of 2. NOTE: As indicated in the interview summary record mailed January 17, 2003, the amendment attempts to more positively recite the neck width at the juncture with the head as having "substantially the same" width as the head and that the neck width of the Rohaly tie is less than the head width. However, this is a new issue in that it attempts to locate the positions of measurement by using the terms "near" and "adjacent" and these terms are narrower than the claim under final rejection and it is not particularly clear where these measurements are taking place when the narrowing language is used. This is a new issue..

Continuation of 5. does NOT place the application in condition for allowance because: Further, as indicated in the examiner interview summary record, the amendment would not be entered if applicant could not preclude interpreting "substantially the same" as being disclosed by the teaching of Rohaly. Applicant cites Ecolab Inc. v. Envirochem, Inc. 60 USPQ2d 1173 (Fed. Cir. 2001) as showing that the term is definite. Definiteness is not an issue, there is no rejection under 35 U.S.C. 112, second paragraph. The point is that the term "substantially" is broad, In re Nehrenberg 126 USPQ 383. Applicant has no guidelines to preclude the application of Rohaly in the claims under final rejection..